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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,175	03/14/2000	DANIEL RICHARD SCHNEIDEWEND	RCA89037	9591

7590 02/26/2004

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EXAMINER	
LONSBERRY, HUNTER B	

ART UNIT	PAPER NUMBER
2611	12

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/445,175	SCHNEIDEWEND ET AL.	
	Examiner	Art Unit	
	Hunter B. Lonsberry	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *5-8 and 12-16* is/are allowed.

6)☒ Claim(s) *1-4 and 9-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 March 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 11.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 12/8/2003 have been fully considered but they are not persuasive.

1) Applicant argues that hindsight was used to combine the references (Page 6)

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

2) Applicant argues that the moving background of Tsumura might make it more difficult to select a program in Miller (page 7). "Furthermore, Tsumura discloses that the tempo of the music is used as the animation image frame feed data. Since Miller discloses an electronic television program guide schedule system, which does not include tempo data for music in a DMX virtual channel, it is not apparent how it would be possible to modify Miller according to the teaching of Tsumura. Thus there is no motivation to modify Miller to incorporate the teaching of Tsumura." (page 8)

In response to applicant's argument 2, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Miller discloses a digital music service, in which a user may tune to another channel via numerical digital keys 42 to directly tune to a digital music channel without accessing the interface (column 30, lines 36-49). As a result, an animated background would not be distracting to a user, as an experienced user could simply tune to familiar programming without the need for a guide. Tsumura discloses a karaoke system which displays animations, animations and color display data may be selected based upon pitch data and tempo data, or may be automatically picked at random instead of using the synchronization image pulse generated by the tempo detector 2 (column 4, line 4-column 5, line 18). As Tsumura discloses that tempo data is not required for the display and selection of the video images, Miller's lack of tempo data would not prohibit the display of the animations. It would have been obvious to one skilled in the art at the time of invention to modify Miller to include Tsumura's animations as an animated image provides more enjoyment to a user, than a still image would.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-4 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (5,585,866) (provided by applicant) in view of Tsumura et al (Tsumura).

Considering claims 1 and 9, Miller discloses an apparatus for processing a first type of program having both audio and video content and a second type of program having audio-only content comprising:

(a) a memory storing display information representing one or more images (icon, text, title, artist, record company name etc. col. 31, lines 4-46);

(b) means (31,29, 28,16, figure 1) for selecting a program (audio-video program or music); and

(c) a control means (16, figure 1) for determining a type of program of the selected program,

if the control means determines that the selected program is first type of program (audio-video program), then the control means causes playing of the audio content and displaying of the video content associated with the selected program (see selecting of pay-per-view movie at col. 18, lines 26-67 or selecting of NVOD at col. 32, lines 9-43 and col. 28, line 61 – col. 30, line 22),

if the control means determines that the selected program is a second type of program (DMX channels 41-46), then the control means causes playing of the audio-only content (music) associated with the selected program and displaying of stored the image (see placement of icon or text indicating that the Listen function has been

activated at col. 31, lines 14-18 or displaying title, artist, record company name etc. of the music currently being played at col. 31, lines 24-46) (see all references to DMX and NVOD selections in columns 28-31).

Although Miller discloses a memory storing images to be displayed when music is selected or activated (col. 31, lines 4-46), he fails to specifically disclose a memory storing display information representing an animated image as recited in the claim.

Tsumura discloses an apparatus comprising a memory (6) for storing display information representing animated image and displaying an audio program with the animated image for the advantage of providing visual enjoyment with music to users. In particular, animated images provide more enjoyment over still images. See abstract, col. 1, line 29-45 and col. 2, lines 3-21, 51-64.

It would have been obvious to one of ordinary skill in the art to modify Miller's system to include any type of visual information such as animation, as taught by Tsumura, for the advantage of providing visual enjoyment.

Claims 2 and 10 are met by the combined systems of Miller and Tsumura, wherein Miller discloses that the program guide information includes the audio-only channels as illustrated in figures 43-47 and described in columns 29-31. Therefore, the control means determines the type of program by selecting any one of the audio only programs from the screens in figure 43-47.

As for claims 3 and 11, the combined systems of Miller and Tsumura fail to specifically disclose displaying the program guide information along with the animated image as recited in the claims.

It would have been obvious to one of ordinary skill in the art to modify the combined systems of Miller and Tsumura to include displaying the program guide information along with the animated image because it is typical to display additional information on a guide/general help screen to help or instruct the user to make better decisions.

Claim 4 is met by the combined systems of Miller and Tsumura, since moving images do not burn the phosphor or the display elements on a display screen/monitor (i.e. screen saver).

Allowable Subject Matter

3. Claims 5-8 and 12-16 are allowed because the prior art fails to disclose or suggest an apparatus and corresponding method for processing a first type of program having audio-video content and a second type of program having audio only content, and when a control means determines that a selected program is first type, playing the audio content and displaying the video content and when the control means determines that a selected program is a second type and animation is selected, the control means causes playing of the audio only program and displaying stored animation, and when

animation is not selected, the control means causes playing of the audio only program and displaying a static image as recited in the claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is 703-305-3234. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on 703-305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HBL

HAITRAN
PATENT EXAMINER